



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/526,373

11/07/2005

Thierry Garcia

0526-1096

3364

466

7590

01/22/2009

YOUNG & THOMPSON

209 Madison Street

Suite 500

ALEXANDRIA, VA 22314

EXAMINER

HECKERT, JASON MARK

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

01/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/526,373	Applicant(s) GARCIA, THIERRY	
	Examiner JASON HECKERT	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/3/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1-5, 10-11 rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2301299 ('299) in view of Goto et al. (Goto) OR Kashkoush et al (Kashkoush) OR Murtha. '299 teaches a closed circuit cleaning apparatus comprising a drum 4 for storing wash fluid, a drum 5 for storing rinse fluid, where both of lines 15 and 16 meet at a three way valve 17, which feeds into a pump 13 that supplies fluid to a cleaning chamber 3. As noted in the applicant's specification, '299 does not teach refilling the drum 4 with fluid from drum 5 when the fluid in drum 4 is low. This is not considered to be a novel, as automatic refilling systems have a strong presence in the prior art. Goto teaches including a sensor 25 in recirculation type tank 17, wherein if the fluid is too low, the tank is refilled from a supply vessel 26. Kashkoush teaches a low level sensor 17 in a chemical reservoir 11 that commences a refill operation if the solution is too low. Murtha teaches including tanks with clean solvent 64 and 66, for refilling a collection tank 62 when the solution is inadequate for use. Thus, considering that '299 already discloses two tanks with the same solvent, it is considered obvious to include automatic replenishing means, as shown by the above prior art, to remedy a low level condition in the wash drum. Various sensing means are known in the art, including weight sensors,

Art Unit: 1792

and modifying the sensors of Goto, Kashkoush, or Murtha is considered to only require routine skill in the art. '299 also shows that drum 4 is in communication with drum 5 via valve 17, thus little modification is required to implement a refill scheme like that of the cited prior art. Pneumatic membrane pumps are conventional in the art, and it would be obvious to one of ordinary skill to substitute one known pump design for another, as this only a mere substitution of parts. Control means and valve sensing are also conventional in the art. The claimed elements were known in the prior art and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Also the applicant appears to be heavily relying on intended use of the apparatus (such as claims 1, 2, and 10). The manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1548 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988); *In re Finsterwalder* 168 USPQ 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967). Furthermore, apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.* 15 USPQ 2d 1525 (Fed. Cir. 1990); *Demaco Corp. v. F. Von Langsdorf Licensing Ltd.* 7 USPQ 2d 1222, 1224-1225 (Fed. Cir. 1988). It would have been obvious at the time of the invention to modify '299 and include automatic refilling means, as shown by Goto, Kashkoush, and Murtha, in order to refill the wash drum in a low level condition.

3. Claims 6-9 rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2301299 ('299) in view of Goto et al. (Goto) OR Kashkoush et al. (Kashkoush) OR Murtha in further view of Mohn. '299 does not disclose the use of foot control. Mohn

Art Unit: 1792

teaches foot operated switches in the use of paint gun cleaners (see abstract). The method in which such a device is used is considered to be the intended use of the apparatus. The manner in which an apparatus operates is not germane to the issue of patentability of the apparatus itself. *Ex parte Wikdahl* 10 USPQ 2d 1546, 1548 (BPAI 1989); *Ex parte McCullough* 7 USPQ 2d 1889, 1891 (BPAI 1988); *In re Finsterwalder* 168 USPQ 530 (CCPA 1971); *In re Casey* 152 USPQ 235, 238 (CCPA 1967).

Furthermore, apparatus claims cover what a device is, not what a device does.

Hewlett-Packard Co. v. Bausch & Lomb Inc. 15 USPQ 2d 1525 (Fed. Cir. 1990);

Demaco Corp. v. F. Von Langsdorf Licensing Ltd. 7 USPQ 2d 1222, 1224-1225 (Fed.

Cir. 1988). The device of Mohn is considered to be capable of performing the same

function as the device of claims 6-10. It would have been obvious at the time of

invention to modify '299 as stated above, and further include a foot operated switch, as shown by Mohn, to control the apparatus.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5. US Patent 5421341 teaches that pneumatic membrane pumps are commercially available pumps.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON HECKERT whose telephone number is (571)272-2702. The examiner can normally be reached on Mon. to Friday, 9:00 - 5:30.

Art Unit: 1792

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/
Supervisory Patent Examiner, Art
Unit 1792

JMH